

Application No. 10/563,238  
Attorney Docket No.: 053550  
Response Under 37 C.F.R. § 1.111

### REMARKS

Claims 2-4 are pending in the present application.

Claims 2-4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over **Ciccarelli** (U.S. 4,263,510) in view of **Das Gupta** (U.S. 3,440,419).

Favorable reconsideration is requested.

Applicant respectfully submits that Ciccarelli in view of Das Gupta does not teach or suggest:

wherein said X-ray diffraction/spectral device obtains third data which is data regarding diffracted X-rays and is based on a difference between said first data and said second data

as recited in claims 2 and 3; and “a data processing means” for performing this function as recited in claim 4.

The Office Action takes the position that this feature of claims 2-4 is taught in Ciccarelli at col. 4, lines 29-35. (Office Action, page 3.) This passage of Ciccarelli discloses a wave-dispersive or energy-dispersive analyzer that is disposed near the entry of the snout 28 of detector 26. Ciccarelli discloses that the analyzer analyzes X-ray fluorescent emission and absorption spectra and X-ray diffraction patterns generated by the incidence of the collimated rays on the specimen. However, Ciccarelli does not disclose obtaining data regarding diffracted X-rays based on a difference between data gathered at a first position and data gathered at a second position. Nor does Ciccarelli disclose a data processing means for obtaining this data.

Applicant respectfully submits that the combination of Ciccarelli and Das Gupta would be inoperable.

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The Office Action cites Das Gupta for disclosing positioning members that position the source and detector without the use of a goniometer or specimen rotation mechanism. (Office Action, page 3.) However, the use of a goniometer is an integral part of the device in Ciccarelli. The goniometer in Ciccarelli positions the specimen holder 18 to an angular displacement  $\theta$  relative to the collimator axis, and positions the detector relative to the collimator axis to an angular displacement of  $2\theta$ . (Col. 4, lines 36-50.) The device in Ciccarelli maintains the relationship  $\theta$  and  $2\theta$  for every position of the specimen. Without the goniometer in Ciccarelli, the angles and the relationship of the angles would not be known. Thus, modifying the device of Ciccarelli by combining the teachings of Das Gupta would lead to an inoperable device.

For at least the foregoing reasons, claims 2-4 are patentable over the cited references. Accordingly, withdrawal of the rejection of claims 2-4 is hereby solicited.

In view of the above remarks, Applicant submits that that the claims are in condition for allowance. Applicant requests such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicant's undersigned attorney to arrange for an interview to expedite the disposition of this case.

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If this paper is not timely filed, Applicant respectfully petitions for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,  
**WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP**

A handwritten signature in black ink, appearing to read 'A. Melick', written in a cursive style.

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